

RICHARD G. (DICK) MARQUARDT
STATE INSURANCE COMMISSIONER
AND STATE FIRE MARSHAL

STATE OF WASHINGTON

DAVID H. RODGERS
CHIEF DEPUTY



OFFICE OF

INSURANCE COMMISSIONER

BULLETIN

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Subject: MULTIPLE EMPLOYERS TRUSTS (METs)

In recent years there has been a proliferation of Multiple Employer Trusts (METs) purportedly established under the Employee Retirement Income Security Act (ERISA). Some of these METs are self-funded, some are partially self-funded, others are fully insured, and still others are insured some of the time.

You should be aware that such arrangements have, with disturbing frequency, led to unpaid claims and insureds being left with no place to turn. A recent example in our state was Pacific Insurance Administrators (PIA) of Boise which is now defunct. PIA's sudden bankruptcy left almost 400 Washington State employers and several thousand of their employees without coverage with no warning--one day they had coverage the next day it was gone.

The PIA was a so called "fully insured" MET or at least appeared to be "fully insured" most of the time. A MET fully insured with a well managed insurance company today may, overnight and without warning, become "fully insured" with a company which is not well managed.

The purpose of this bulletin is to advise agents and brokers that new legislation at both the state and federal levels has somewhat clarified the regulatory jurisdiction for METs and similar entities which may be offering coverage. In most instances they are now subject to some, if not complete, state regulatory authority. In the past, many METs were operating in a gray area between state and federal jurisdiction. Often, litigation was necessary to establish the true character of the entity.

Recent amendments to ERISA provide, in part, that, in the case of a MET which is a fully insured employee welfare benefit plan, state laws regulating insurance may apply to the extent that such laws provide standards requiring the maintenance of specified levels of reserves and levels of contributions which any such plan, or any trust organized under such a plan, must meet in order to pay benefits when due. Further, state laws may apply to any other MET to the extent they are not inconsistent with ERISA. Entities claiming exemption from state regulation may be called upon by the insurance department to demonstrate why they are not under the department's jurisdiction.

METs established and maintained by third-party administrators and marketed to employers who in reality have no common interest other than the coverage itself and who do not, in fact, control the program are not qualified ERISA

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plans and are subject to some measure of state regulation. Such a MET, if offered in this state, would be acting as if it were an authorized insurer when, in fact, it is not authorized.

Unless pre-empted by ERISA, the Insurance Commissioner's Office will not tolerate abuse or evasion of the insurance code which results in innocent people suffering financial losses. Agents and brokers marketing coverage on behalf of unauthorized insurers expose their own assets to some risk and place their insurance licenses in jeopardy.

In order to minimize personal liability or potential penalty under the insurance code, an agent or broker should ask, at least, the following questions before agreeing to market at MET.

- (1) Is there a pressing need to market through a MET in view of the substantial number of conventional insurers and health care service contractors currently marketing in the state of Washington?
- (2) Are the premium charges comparable to those of the well-established insurers and health care service contractors currently active in the marketplace?
- (3) If a MET claims to be "fully insured" and thus exempt from state regulation, has it been determined to be "fully insured" by the Secretary of Labor?
- (4) If the MET claims to be fully insured, is it using a company authorized by the Insurance Commissioner to write business in the state of Washington?
- (5) If a MET claims to be fully insured, is there assurance that the insurance carrier will not be replaced without advance notice to agents and participating employers?
- (6) Are claims being paid with reasonable promptness?
- (7) Has the MET been established to avoid either state or federal regulation, or both?

Unless an agent or broker can confidently answer all the above questions in the affirmative, prudence would dictate that business not be placed with the MET.

DICK MARQUARDT
Insurance Commissioner